

Message Text

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ACTION L-02

INFO OCT-01 EUR-12 ISO-00 CPR-01 SCA-01 SCS-03 INR-07

USIA-06 PA-01 PRS-01 EB-07 PM-03 NSC-05 SP-02 SS-15

A-01 /068 W

----- 093531

R 081900Z JUL 75

FM AMEMBASSY BERLIN

TO SECSTATE WASHDC 1046

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E.O. 11652: N/A

TAGS: PFOR, CGEN, GE

SUBJECT: CONSULAR CONVENTION NEGOTIATIONS: SECOND ROUND

SUMMARY

IT WOULD BE USEFUL FOR THE NEGOTIATING COMMITTEE TO EXPLORE THE ISSUE WHETHER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION APPLY TO ALIENS AS WELL AS CITIZENS OF THE US. IF SO, THIS FACT COULD BE USED AS A SUBSTANTIAL ARGUMENT IN CONSULAR CONVENTION NEGOTIATIONS AGAINST THE GDR'S INSISTENCE UPON INCLUSION OF A DEFINITION OF NATIONALITY IN A CONSULAR AGREEMENT. I DISCUSSED THIS SUBJECT IN THE DEPARTMENT LAST APRIL. END SUMMARY

1. I HAVE AVAILABLE U.S.C.A.A. WITH ANNOTATION ON AMENDMENTS TO THE CONSTITUTION, BUT NO SUPREME COURT OR OTHER FEDERAL COURT DECISIONS.

2. THE FIFTH AMENDMENT'S INJUNCTION THAT "NO PERSON SHALL ...BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY, WITHOUT DUE PROCESS OF LAW" APPLIES TO ARBITRARY ACTION BY THE FEDERAL GOVERNMENT. THE FOURTEENTH AMENDMENT INJUNCTION IS AGAINST STATE ACTION.

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3. THE FIFTH AMENDMENT USES THE WORD "PERSON" WHILE THE

FOURTEENTH AMENDMENT USES THE WORDS "CITIZENS" AND "PERSON". I KNOW THAT ONLY CITIZENS OF THE UNITED STATES POSSESS CERTAIN POLITICAL RIGHTS, AS THE RIGHT TO VOTE AND HOLD OFFICE, NOT ACCORDED TO "ALIENS." FROM MEMORY AND WITHOUT SUPPORT OF SUPREME COURT, OR OTHER FEDERAL COURT DECISIONS, I BELIEVE ALIENS ARE ACCORDED "DUE PROCESS" AND THE "EQUAL PROTECTION OF THE LAWS" IN THE PROTECTION OF THEIR INDIVIDUAL RIGHTS OF PERSONALITY.

4. AS I RECALL, DURING WORLD WAR II GERMAN SABOTEURS WHO LANDED ON THE EASTERN SEABOARD MOVED FOR TRIAL IN THE FEDERAL COURTS, BUT MOTION WAS DENIED UPON GROUND THAT THE AREA IN WHICH THEY WERE CAPTURED HAD BEEN DECLARED A COMBAT OR WAR ZONE BY THE PRESIDENT. AGAIN, AS I RECALL, THE SAME REASONING WAS USED BY SUPREME COURT ON THE SUBJECT OF EXPULSION OF JAPANESE FROM THE WEST COAST ---DIFFERENCE BEING THAT UNDOUBTEDLY THOSE EXPELLED MUST HAVE BEEN PREPONDERATELY CITIZENS OF THE US. WITHOUT BENEFIT OF AN ACTUAL ASE DECISION THE IMPLICATION CAN BE DRAWN THAT, BUT FOR "COMBAT OR WAR AREA" DESIGNATION, ALIENS WOULD HAVE HAD RECOURSE TO FEDERAL COURTS. I NOTE ONE ANNOTATION, PAGE 3 USCA, CONSTITUTION 13 TO 14, LAST ANNOTATION IN SECOND COLUMN, EVIDENTLY A CASE DEALING WITH AMERICAN INDIANS, THE STATEMENT THAT "ALTHOUGH CITIZENSHIP BESTOWS UPON THE INDIVIDUAL CERTAIN IMPORTANT POLITICAL RIGHTS, THE BASIC CONSTITUTIONAL RIGHTS ARE POSSESSED BY CITIZENS AND RESIDENT NON-CITIZENS ALIKE."

5. IF THE PREMISE OF THIS MESSAGE IS CORRECT, I CONSIDER IT WOULD BE A HELPFUL ARGUMENT IN NEGOTIATIONS: THAT IS, THAT US CANNOT COERCE OR RESTRAIN ALIENS IN THE EXERCISE OF BASIC CONSTITUTIONAL RIGHTS. THIS WOULD BE EQUALLY APPLICABLE TO GDR AND FRG. I ASSUME IF CONVENTION INCLUDED THE GDR VIEW OF NATIONALITY AND THE SENATE SHOULD CONCUR, IT MIGHT FALL UNDER THE PROTECTION OF ARTICLE SIX OF THE CONSTITUTION, BUT I DOUBT THAT THE SENATE WOULD CONCUR IN SUCH A CONVENTION.COOPER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CONSULAR AGREEMENTS, NEGOTIATIONS, MEETING REPORTS
Control Number: n/a
Copy: SINGLE
Draft Date: 08 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BERLIN05978
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750236-0060
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750774/aaaacoha.tel
Line Count: 98
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 03 JUN 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 JUN 2003 by KelleyW0>; APPROVED <04 JUN 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONSULAR CONVENTION NEGOTIATIONS: SECOND ROUND SUMMARY
TAGS: PFOR, CGEN, GC
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006